

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE: SHALE OIL ANTITRUST
LITIGATION

Case No. 1:24-md-03119-MLG-LF

This Document Relates to All Actions

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs' Notice of Supplemental Authority (Dkt. 214) proffers two cases that are not new, controlling, pertinent or significant. *See* D.N.M.LR-Civ. 7.8.

Leibovitch v. Islamic Republic of Iran, 297 F. Supp. 3d 816 (N.D. Ill. 2018), involved “a discovery dispute, plain and simple,” concerning terrorism victims’ collection “on a valid judgment under” the Foreign Sovereign Immunities Act, which “provide[d] a mechanism for terrorism victims to recover from foreign states.” *Id.* at 827-28. *Leibovitch* distinguished *Spectrum Stores, Inc. v. Citgo Petroleum Corp.*, 632 F.3d 938 (5th Cir. 2011), because the *Spectrum Stores* court, like here, “was ‘asked essentially to reprimand foreign nations.’” 297 F. Supp. 3d at 827 n.7. By contrast, *Leibovitch* was “merely deciding whether plaintiffs should be permitted to conduct post-judgment discovery into a commercial transaction between an American company and an Iranian company affiliated with the Iranian government.” *Id.* Nonetheless, *Leibovitch* took the precaution of “proactively” seeking “the input of the Executive Branch,” which “declined to raise any objection.” *Id.* Here, as in *Spectrum Stores*, “[a]ny ruling on the merits of this case would, by its core essence, impermissibly interfere with the Executive

Branch’s longstanding policy of engaging with OPEC nations regarding the global supply of oil through diplomacy instead of private litigation.” 632 F.3d at 956.

World Wide Mins. Ltd. v. Republic of Kazakhstan, 116 F. Supp. 2d 98 (D.D.C. 2000), is also inapposite. It said, in *dictum*, that the act of state doctrine would not bar hypothetical contract claims against a domestic company because “Kazakhstan’s governmental decrees would not be directly implicated.” *Id.* at 105. By contrast, plaintiffs here allege that OPEC+ led a global conspiracy restricting worldwide crude oil production. OPEC member states’ alleged actions are indeed “directly implicated,” *id.*, because adjudicating plaintiffs’ conspiracy claims “would necessarily call into question the acts of foreign governments with respect to exploitation of their natural resources,” *Spectrum Stores*, 632 F.3d at 954. *World Wide* predates *Spectrum Stores* and *D’Augusta v. American Petroleum Institute*, 117 F.4th 1094 (9th Cir. 2024), which both applied the act of state doctrine to dismiss antitrust conspiracy claims involving OPEC—precisely the allegations here.

Dated: June 3, 2025

Respectfully submitted,

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